

105TH CONGRESS  
1ST SESSION

# S. 712

To provide for a system to classify information in the interests of national security and a system to declassify such information.

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IN THE SENATE OF THE UNITED STATES

MAY 7, 1997

Mr. MOYNIHAN (for himself and Mr. HELMS) introduced the following bill;  
which was read twice and referred to the Committee on Governmental Affairs

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## A BILL

To provide for a system to classify information in the interests of national security and a system to declassify such information.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Government Secrecy  
5       Act of 1997”.

6       **SEC. 2. PURPOSE.**

7       It is the purpose of this Act to promote the effective  
8       protection of classified information and the disclosure of  
9       information where there is not a well-founded basis for

1 protection or where the costs of maintaining a secret out-  
2 weigh the benefits.

3 **SEC. 3. FINDINGS.**

4 The Congress makes the following findings:

5 (1) The system for classifying and declassifying  
6 national security information has been based in reg-  
7 ulation, not in statute, and has been governed by six  
8 successive Executive orders since 1951.

9 (2) The Commission on Protecting and Reduc-  
10 ing Government Secrecy, established under Public  
11 Law 103–236, issued its report on March 4, 1997  
12 (S. Doc. 105–2), in which it recommended reducing  
13 the volume of information classified and strengthen-  
14 ing the protection of classified information.

15 (3) The absence of a statutory framework has  
16 resulted in unstable and inconsistent classification  
17 and declassification policies, excessive costs, and in-  
18 adequate implementation.

19 (4) The implementation of Executive orders will  
20 be even more costly as more documents are prepared  
21 and used on electronic systems.

22 (5) United States taxpayers incur substantial  
23 costs as several million documents are classified each  
24 year. According to figures submitted to the Informa-  
25 tion Security Oversight Office and the Congress, the

1 executive branch and private industry together spent  
2 more than \$5.2 billion in 1996 to protect classified  
3 information.

4 (6) A statutory foundation for the classification  
5 and declassification of information is likely to result  
6 in a more stable and cost-effective set of policies and  
7 a more consistent application of rules and proce-  
8 dures.

9 (7) Enactment of a statute would create an op-  
10 portunity for greater oversight by the Congress of  
11 executive branch classification and declassification  
12 activities, without impairing the responsibility of ex-  
13 ecutive branch officials for the day-to-day adminis-  
14 tration of the system.

15 **SEC. 4. CLASSIFICATION AND DECLASSIFICATION OF IN-**  
16 **FORMATION.**

17 (a) CLASSIFICATION FOR NATIONAL SECURITY REA-  
18 SONS.—The President may, in accordance with this Act,  
19 protect from unauthorized disclosure information in the  
20 possession and control of the executive branch when there  
21 is a demonstrable need to do so in order to protect the  
22 national security of the United States. The President shall  
23 ensure that the amount of information classified is the  
24 minimum necessary to protect the national security.

1 (b) PROCEDURES FOR CLASSIFICATION AND DECLASSIFICATION.—  
2

3 (1) IN GENERAL.—The President shall, to the  
4 extent necessary, establish categories of information  
5 that may be classified and procedures for classifying  
6 information under subsection (a). The President  
7 shall, concurrently with the establishment of such  
8 categories and procedures, establish, and allocate re-  
9 sources for the implementation of, procedures for de-  
10 classifying information previously classified.

11 (2) PUBLICATION OF CATEGORIES AND PROCE-  
12 DURES.—

13 (A) The President shall publish notice in  
14 the Federal Register of any categories and pro-  
15 cedures proposed to be established under para-  
16 graph (1) with respect to both the classification  
17 and declassification of information, and shall  
18 provide an opportunity for interested agencies  
19 and other interested persons to submit com-  
20 ments thereon. The President shall take into  
21 account such comments before establishing the  
22 categories and procedures, which shall also be  
23 published in the Federal Register.

24 (B) The procedures set forth in subpara-  
25 graph (A) shall apply to any modifications in

1 categories or procedures established under  
2 paragraph (1).

3 (3) AGENCY STANDARDS AND PROCEDURES.—

4 The head of each agency shall establish standards  
5 and procedures for classifying and declassifying in-  
6 formation created by that agency on the basis of the  
7 categories and procedures established by the Presi-  
8 dent under paragraph (1). Each agency head, in es-  
9 tablishing and modifying standards and procedures  
10 under this paragraph, shall follow the procedures re-  
11 quired of the President in paragraph (2) for estab-  
12 lishing and modifying categories and procedures  
13 under that paragraph.

14 (c) CONSIDERATIONS IN DETERMINING CLASSIFICA-  
15 TION AND DECLASSIFICATION.—

16 (1) IN GENERAL.—In determining whether in-  
17 formation should be classified or declassified, the  
18 agency official making the determination shall weigh  
19 the benefit from public disclosure of the information  
20 against the need for initial or continued protection  
21 of the information under the classification system. If  
22 there is significant doubt as to whether information  
23 requires such protection, it shall not be classified.

24 (2) WRITTEN JUSTIFICATION.—

1                   (A) ORIGINAL CLASSIFICATION.—The  
2                   agency official who makes the decision to clas-  
3                   sify information shall identify himself or herself  
4                   and shall provide in writing a detailed justifica-  
5                   tion for that decision.

6                   (B) DERIVATIVE CLASSIFICATION.—In any  
7                   case in which an agency official classifies a doc-  
8                   ument on the basis of information previously  
9                   classified that is included or referenced in the  
10                  document, that agency official shall identify  
11                  himself or herself in that document.

12               (d) STANDARDS FOR DECLASSIFICATION.—

13               (1) INITIAL CLASSIFICATION PERIOD.—Infor-  
14               mation may not remain classified under this Act for  
15               longer than a 10-year period unless the head of the  
16               agency that created the information certifies to the  
17               President at the end of such period that the infor-  
18               mation requires continued protection, based on a  
19               current assessment of the risks of disclosing the in-  
20               formation, carried out in accordance with subsection  
21               (c)(1).

22               (2) ADDITIONAL CLASSIFICATION PERIOD.—In-  
23               formation not declassified prior to or at the end of  
24               the 10-year period referred to in paragraph (1) may  
25               not remain classified for more than a 30-year period

1 unless the head of the agency that created the infor-  
2 mation certifies to the President at the end of such  
3 30-year period that continued protection of the in-  
4 formation from unauthorized disclosure is essential  
5 to the national security of the United States or that  
6 demonstrable harm to an individual will result from  
7 release of the information.

8 (3) DECLASSIFICATION SCHEDULES.—All clas-  
9 sified information shall be subject to regular review  
10 pursuant to schedules each agency head shall estab-  
11 lish and publish in the Federal Register. Each agen-  
12 cy shall follow the schedule established by the agen-  
13 cy head in declassifying information created by that  
14 agency.

15 (4) ASSESSMENT OF EXISTING CLASSIFIED IN-  
16 FORMATION.—Each agency official responsible for  
17 information which, before the effective date of this  
18 Act—

19 (A) was determined to be kept protected  
20 from unauthorized disclosure in the interest of  
21 national security, and

22 (B) had been kept so protected for longer  
23 than the 10-year period referred to in para-  
24 graph (1),

1 shall, to the extent feasible, give priority to making  
 2 decisions with respect to declassifying that informa-  
 3 tion as soon as is practicable.

4 (e) REPORTS TO CONGRESS.—Not later than Decem-  
 5 ber 31 of each year, the head of each agency that is re-  
 6 sponsible for the classification and declassification of in-  
 7 formation shall submit to the Congress a report that de-  
 8 scribes the application of the classification and declas-  
 9 sification standards and procedures of that agency during  
 10 the preceding fiscal year.

11 (f) AMENDMENT TO FREEDOM OF INFORMATION  
 12 ACT.—Section 552(b)(1) of title 5, United States Code,  
 13 is amended to read as follows:

14 “(1)(A) specifically authorized to be classified  
 15 under the Government Secrecy Act of 1997, or spe-  
 16 cifically authorized, before the effective date of that  
 17 Act, under criteria established by an Executive order  
 18 to be kept secret in the interest of national security  
 19 (as defined by section 7(6) of the Government Se-  
 20 crecy Act of 1997), and (B) are in fact properly  
 21 classified pursuant to that Act or Executive order;”.

22 **SEC. 5. NATIONAL DECLASSIFICATION CENTER.**

23 (a) ESTABLISHMENT.—The President shall establish,  
 24 within an existing agency, a National Declassification  
 25 Center, the functions of which shall be—



1           (1) to coordinate and oversee the declassifica-  
2           tion policies and practices of the Federal Govern-  
3           ment; and

4           (2) to provide technical assistance to agencies  
5           in implementing such policies and practices, in ac-  
6           cordance with this section.

7           (b) FUNCTIONS.—

8           (1) DECLASSIFICATION OF INFORMATION.—The  
9           Center shall, at the request of any agency and on a  
10          reimbursable basis, declassify information within the  
11          possession of that agency pursuant to the guidance  
12          of that agency on the basis of the declassification  
13          standards and procedures established by that agency  
14          under section 4, or if another agency created the in-  
15          formation, pursuant to the guidance of that other  
16          agency on the basis of the declassification standards  
17          and procedures established by that agency under  
18          section 4. In carrying out this paragraph, the Center  
19          may use the services of officers or employees or the  
20          resources of another agency, with the consent of the  
21          head of that agency.

22          (2) COORDINATION OF POLICIES.—The Center  
23          shall coordinate implementation by agencies of the  
24          declassification policies and procedures established  
25          by the President under section 4 and shall ensure

1 that declassification of information occurs in an effi-  
2 cient, cost-effective, and consistent manner among  
3 all agencies that create or otherwise are in posses-  
4 sion of classified information.

5 (3) DISPUTES.—If disputes arise among agen-  
6 cies regarding whether information should or should  
7 not be classified, or between the Center and any  
8 agency regarding the Center's functions under this  
9 section, the heads of the agencies concerned or of  
10 the Center may refer the matter to the President for  
11 resolution of the dispute.

12 (c) NATIONAL DECLASSIFICATION ADVISORY COM-  
13 MITTEE.—

14 (1) IN GENERAL.—There is established a 12-  
15 member National Declassification Advisory Commit-  
16 tee. 4 members of the Advisory Committee shall be  
17 appointed by the President and 2 members each  
18 shall be appointed by the majority and minority  
19 leaders of the Senate, the Speaker of the House of  
20 Representatives, and the minority leader of the  
21 House of Representatives.

22 (2) MEMBERSHIP.—The members of the Advi-  
23 sory Committee shall be appointed from among dis-  
24 tinguished historians, political scientists, archivists,  
25 other social scientists, and other members of the

1 public who have a demonstrable expertise in declas-  
2 sification and the management of Government  
3 records. No officer or employee of the United States  
4 Government shall be appointed to the Advisory Com-  
5 mittee.

6 (3) DUTIES.—The Advisory Committee shall  
7 provide advice to the Center and make recommenda-  
8 tions concerning declassification priorities and activi-  
9 ties.

10 (d) ANNUAL REPORTS.—The Center shall submit to  
11 the President and the Congress, not later than December  
12 31 of each year, a report on its activities during the pre-  
13 ceding fiscal year, and on the implementation of agency  
14 declassification practices and its efforts to coordinate  
15 those practices.

16 **SEC. 6. INFORMATION TO THE CONGRESS.**

17 Nothing in this Act shall be construed to authorize  
18 the withholding of information from the Congress.

19 **SEC. 7. DEFINITIONS.**

20 As used in this Act—

21 (1) the term “Advisory Committee” means the  
22 National Declassification Advisory Committee estab-  
23 lished under section 5(c);

24 (2) the term “agency” means any executive  
25 agency as defined in section 105 of title 5, United

1 States Code, any military department as defined in  
2 section 102 of such title, and any other entity in the  
3 executive branch of the Government that comes into  
4 the possession of classified information;

5 (3) the term “Center” means the National De-  
6 classification Center established under section 5(a);

7 (4) the terms “classify”, “classified”, and “clas-  
8 sification” refer to the process by which information  
9 is determined to require protection from unauthor-  
10 ized disclosure pursuant to this Act in order to pro-  
11 tect the national security of the United States;

12 (5) the terms “declassify”, “declassified”, and  
13 “declassification” refer to the process by which in-  
14 formation that has been classified is determined to  
15 no longer require protection from unauthorized dis-  
16 closure pursuant to this Act; and

17 (6) the term “national security of the United  
18 States” means the national defense or foreign rela-  
19 tions of the United States.

20 **SEC. 8. EFFECTIVE DATE.**

21 This Act shall take effect 180 days after the date of  
22 the enactment of this Act.

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